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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/865,696	05/29/2001	Glenn G. Strawder		5731

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William D. Hall
10850 Stanmore Drive
Potomac, MD 20854-1522

EXAMINER
PORTER, RACHEL L

ART UNIT	PAPER NUMBER
3626	

DATE MAILED: 09/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/865,696

Applicant(s)

STRAWDER, GLENN G.

Examiner

Rachel L. Porter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Notice to Applicant

1. This communication is in response to the amendment filed 6/24/06. Claims 19-27 are pending. Claims 1-18 have been cancelled.

Information Disclosure Statement

2. The information disclosure statement filed 5/29/01 fails to comply with 37 CFR 1.98(a)(1), which requires the following: (1) a list of all patents, publications, applications, or other information submitted for consideration by the Office; (2) U.S. patents and U.S. patent application publications listed in a section separately from citations of other documents; (3) the application number of the application in which the information disclosure statement is being submitted on each page of the list; (4) a column that provides a blank space next to each document to be considered, for the examiner's initials; and (5) a heading that clearly indicates that the list is an information disclosure statement. The information disclosure statement has been placed in the application file, but the information referred to therein has not been considered.

In particular, the Examiner has considered the **patents** listed on the 1449 forms filed 5/29/01 and 10/09/01. However, while applicant is not required to resubmit the documents provided in a previous IDS from a parent application, Applicant must provide a listing of all documents (**e.g. the NPL labeled "Notice" from the 10/9/01 IDS**) in the proper IDS format as outlined above if Applicant would like those documents to be considered by the Examiner in the current application.

Specification

3. The disclosure is objected to because of the following informalities:

See 37 CFR 1.75 and MPEP § 608.01(m). The claim or claims must commence on separate sheet or electronic page (37 CFR 1.52(b)(3)).

In particular, see page 37 of the Specification submitted 5/29/2001.

Appropriate correction is required.

Claim Objections

4. Claim 25 objected to because of the following informalities: The claim currently recites "will producing images of some type of a part..." The language is awkward, and there appears to be a word missing from the sentence. Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 19-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 19,23, and 25 recite the limitation "and/or." The inclusion of this phrase renders these claims vague and indefinite because it is unclear to the Examiner which

components or functions are required as a part of the claimed invention. For the purpose of applying art, the Examiner will only consider that one of options listed in the "and/or" option is required. (i.e. The examiner will consider the recitation of "and/or" as a recitation of "or".)

Claim 19 recites the limitation "said output station" in line 7. There is insufficient antecedent basis for this limitation in the claim.

As per claim 23, it is unclear to the Examiner which statutory class of invention Applicant intends to claim. While the preamble recites a method, the body of the independent claim and dependent claim 24 each recite components using computer means or means-plus-function language.

Claim 25 recites the limitation "the manager" in line 8. There is insufficient antecedent basis for this limitation in the claim.

Claims 20-22, 24,26-27 inherit the deficiencies of their respective independent claims and are therefore also rejected.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 25 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Dorne (USPN 6,282,513).

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[claims 25, 27] Dorne discloses a method of providing a user (a supervisor) with data relating to the work done by a number of individual operators comprising:

- providing a number of individual medical imaging machines each of which will produce an image of the body (col. 6, lines 20-40)
- providing operators with medical imaging machines (col. 8, lines 49-56)
- providing computer means for storing data on the operations of at least one imaging machine or operator (col. 8, lines 34-56)
- providing computer means for output for said supervisor that enables the manager to monitor the operations of the imaging machines or operators. (col. 8, lines 34-68—user other than radiologist/operator can see which procedures were planned, performed, whether any complications were encountered...)

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 19-24 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dorne (USPN 6,282,513) in view of Wenstrup et al (USPN 5,544,157).

[claims 19 and 22] Dorne teaches an apparatus for monitoring the operations of imaging machines that takes pictures (i.e. produce images) of a part of a body and the procedure each of said machine is being used to perform, comprising:

- computer means for monitoring both said machines and said procedures, and producing information as to the operations of the machines and procedures (col. 4, lines 24-52; (Figure 1, ref. no. 100.)
- computer means capable of separately monitoring each of said machines, and for producing output information relating to at least one of said machines (e.g. at an output source) (col. 7, lines 11-24-e.g. view codes)
- computer means capable of separately monitoring each of said procedures, and for producing output information relating to at least one of said procedures ((col. 7, lines 11-24-e.g. view codes/procedures)
- said computer means includes a stored standard procedure for at least one of said machines and at least one of the said procedures applicable to the taking of a picture (producing images) for a body part (col. 6, lines 9-17, Fig. 3C)
- means for entering into said computer means a procedure for said machine the actual performance/ taking of a picture of a body part of a patient, (col. 6, lines 38-40; col. 11, lines 30-33)

Dorne further discloses an apparatus including one or more computers for analyzing calculating the data from said first computer, (col. 6, line 67-col. 7, line 24—e.g. generate cpt codes) and means for producing a computer output from said one or more computers disclosing the results of any analysis performed on said data. (col. 7, lines

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11-24-e.g. view codes). However, Dorne does not expressly disclose comparing the standard procedure and the procedure entered during the production of the image and providing an output that explains the differences or similarities between the two.

Wenstrup discloses a system that uses a template and includes means to determine the differences and similarities between images (e.g. x-ray images) and to provide output regarding these similarities/differences. (col. 8, line 53-col. 9, line 30) At the time of the Applicant's invention it would have been obvious to one of ordinary skill in the art to modify the system of Dorne with the teaching of Wenstrup to include a feature that compares/corrects for differences between the images. As suggested by Wenstrup, one would have been motivated to include these features to provide standardization of computed radiography and to improve technicians' confidence in the images received and read. (col. 2, lines 40-49)

[claims 20-21] Dorne discloses an apparatus wherein the computer means provides the station with an output which sets forth prices and summaries regarding the machines (i.e. determining how many of a particular examination have been performed and determining how much money a particular number of examinations produce) (col. 15, lines 60-col. 16, line 19)

[claims 23-24] Dorne teaches an apparatus for monitoring the operations of imaging machines that takes pictures (i.e. produce images) of a part of a body and the procedure each of said machine is being used to perform, comprising:

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- computer means for monitoring both said machines and said operators, and producing information as to the operations of the machines and operators using the machines (col. 4, lines 24-52; Figure 1, ref. no. 100.; col. 8, lines 49-56)
- said computer means capable of separately monitoring each of said machines, and for producing output information relating to at least one of said machines (e.g. at an output source) (col. 7, lines 11-24-e.g. view codes)
- computer means capable of separately monitoring each of said operators, and for producing output information relating to at least one of said operators (col. 7, lines 11-24-e.g. view codes/procedures; col. 8, lines 49-56)
- said computer means includes a stored standard procedure for at least one of said machines and at least one of the said procedures applicable to the taking of a picture (producing images) for a body part (col. 6, lines 9-17, Fig. 3C)
- means for entering into said computer means a procedure for said machine the actual performance/ taking of a picture of a body part of a patient, (col. 6, lines 38-40; col. 8, lines 49-56; col. 11, lines 30-33)

Dorne further discloses an apparatus including one or more computers for analyzing calculating the data from said first computer, (col. 6, line 67-col. 7, line 24—e.g. generate cpt codes) and means for producing a computer output from said one or more computers disclosing the results of any analysis performed on said data. (col. 7, lines 11-24-e.g. view codes). However, Dorne does not expressly disclose comparing the standard procedure and the procedure entered during the production of the image and providing an output that explains the differences or similarities between the two.

Wenstrup discloses a system that uses a template and includes means to determine the differences and similarities between images (e.g. x-ray images) and to provide output regarding these similarities/differences. (col. 8, line 53-col. 9, line 30) At the time of the Applicant's invention it would have been obvious to one of ordinary skill in the art to modify the system of Dorne with the teaching of Wenstrup to include a feature that compares/corrects for differences between the images. As suggested by Wenstrup, one would have been motivated to include these features to provide standardization of computed radiography and to improve technicians' confidence in the images received and read. (col. 2, lines 40-49)

[claim 26] Dorne discloses the method of claim 25, as explained in the rejection of claim 25. Dorne further discloses an apparatus including said one or more computers for analyzing calculating the data from said first computer, (col. 6, line 67-col. 7, line 24—e.g. generate cpt codes) and means for producing a computer output from said one or more computers disclosing the results of any analysis performed on said data. (col. 7, lines 11-24-e.g. view codes). However, Dorne does not expressly disclose comparing the standard procedure and the procedure entered during the production of the image and providing an output that explains the differences or similarities between the two. Wenstrup discloses a system that uses a template and includes means to determine the differences and similarities between images (e.g. x-ray images) and to provide output regarding these similarities/differences. (col. 8, line 53-col. 9, line 30) At the time of the Applicant's invention it would have been obvious to one of ordinary skill in the art to

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modify the system of Dorne with the teaching of Wenstrup to include a feature that compares/corrects for differences between the images. As suggested by Wenstrup, one would have been motivated to include these features to provide standardization of computed radiography and to improve technicians' confidence in the images received and read. (col. 2, lines 40-49)

Double Patenting

11. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

12. Claims 19-27 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,3-4,7,10,14, and 16-18 of U.S. Patent No. 6,282,513.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter which the applicant claims in the instant application is broader than that sought in the parent application. In other word, claims 1,3-4,7,10,14, and 16-18 of U.S. Patent No. 6,282,513 fall entirely within the scope of

claims 19-27 of the present application. The independent claims of the '513 patent recite additional limitations not recited or not required (i.e. recited in the alternative) in claims 19-27 of the instant application. However, the elimination of an element or its functions has been held to be an obvious modification. *In re Karlson*, 136 USPQ 184, 186; 311 F2d 581 (CCPA 1963)

Response to Arguments

13. Applicant's arguments filed 6/24/06 have been fully considered but they are not persuasive.

(A) Applicant's arguments regarding the Double Patenting rejection are unpersuasive and unclear. The purpose of a terminal disclaimer in the instant application is to ensure that rights from any resulting patent are not separately assigned (from USPN 6,282,513) in the future.

14. Applicant's arguments with respect to claim 19-27 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

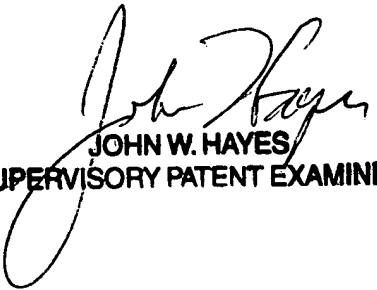
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rachel L. Porter whose telephone number is (571) 272-6775. The examiner can normally be reached on M-F, 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on (571) 272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RP
RP


JOHN W. HAYES
SUPERVISORY PATENT EXAMINER